IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

Crl.Rev.Pet.No. 933 of 1999()

CRA.53/1996 of II ADDL.SESSIONS COURT, KOLLAM
CC.113/1992 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM
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REVN. PETITIONERS: APPELLANTS / ACCUSED 1 & 2
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1. LIYON JONEY, PLAVILA VEEDU,
KANJIRACODE CHERI,
MULAVANA VILLAGE, KOLLAM.

2. JARALD THOMAS, VATTAVILA PUTHEN VEEDU
KANJIRACODE CHERI,
MULAVANA VILLAGE, KOLLAM.

BY ADV. SRI.B.SURESH KUMAR
SMT.K.A.MAYA
SMT.SREEJA S.

RESPONDENT: STATE

STATE OF KERALA, REP.BY ITS
PUBLIC PROSECUTOR , HIGH COURT OF KERALA,
ERNAKULAM, REP.BY C.I. OF POLICE , KUNDARA

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.R.P.No.933 of 1999

Dated this the 3rd day of August, 2007

O R D E R

The revision petitioners are the accused two in number in C.C.No.113/92 in the court of Judicial Magistrate of First Class-I, Kollam with respect to the offences under Sections 457 and 380 read with 34 IPC and stands convicted and sentenced to undergo R.I. for one year each and to pay a fine of Rs.1,000/- each and in default, to undergo simple imprisonment for three months for the offence under Section 457 IPC and R.I. for one year and to pay a fine of Rs.1,000/- each and in default to undergo simple imprisonment for three months for the offence under Section 380 IPC.

2. It is submitted that A1 is no more.

3. The prosecution case is that on 26.7.1991, at about 1.30 a.m., the accused with the common intention of committing theft, broke open the lock of the door on the western side of the office of the KSEB, Kundara and committed theft of one typewriter, five ceiling fans and two telephone eliminators,

altogether valued at Rs.6,200/-. The matter was reported on the next day by PW1, the Asst. Engineer in charge of the office. PW2 is a person who has allegedly seen the accused carrying the ceiling fans in the particular night. PW3 is the witness of the seizure of typewriters and PW4 is another witness to the above. PW5 is a witness cited to prove that the accused was found with stolen articles near the premises of the electricity office. PW6 is an attester to the recovery mahazar and PW7, the investigating officer, and PW8, the Sub Inspector of Police, who rendered the FIS. The evidence relied on by the court below mainly consisted of the testimony of PW1 as to the recovery of the stolen articles from the shop of A1 and from the house of A2. The rest of the witnesses turned hostile.

4. All the same, the evidence of PW7 as to the recovery and as to the identity of the articles as per the evidence of PW1 stand not discredited. The MOs' were recovered from the shop of A1 as per the confession statement of A1 and from the house of A2 as per the confession statement of A2. The recovery as per the confession statement of the accused coupled with the identification of the article by PW1, the Asst. Engineer, rendered

the prosecution evidence credible and trustworthy in the absence of any contradictions or discrepancies brought out. In the circumstances, I find no reason to interfere in the findings of the court below. The conviction is confirmed.

5. The counsel for the revision petitioner has sought for modification of the sentence pleading for leniency pointing out that the incident is dated 26.7.1991 and that about 17 years have elapsed since the commencement of the proceedings and that so far the accused has been facing the ordeal of criminal proceedings. In the circumstances, I find that the sentence is liable to be modified. The sentence imposed on A2 for the offence under Section 380 is modified to imprisonment till the rising of the court and to pay a fine of Rs.5,000/- and in default, to undergo simple imprisonment for three months. No separate sentence is awarded for the offence under Section 457 IPC. A2 shall appear before the JFCM on 20.9.2007 to receive sentence.

The criminal revision petition is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

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